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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.E. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

FRANCES L.,

Defendant and Appellant.

B287907

(Los Angeles County
Super. Ct. No. DK23279A-B)

APPEAL from orders of the Superior Court of Los Angeles County, D. Brett Bianco, Judge. Affirmed.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Mother Frances L. appeals the juvenile court's jurisdictional and dispositional orders for F.L. and R.E., who were two and three years old at the time of their detention. Mother contends substantial evidence does not support the court's jurisdictional findings under Welfare and Institutions Code section 300, subdivision (b),¹ arguing there was no substantial evidence she abused substances, or that her drug use placed the children at risk of harm. She also contends the order removing her children from her care was not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) in May 2017, following a referral that mother and her boyfriend, Jasper E., were emotionally abusing R.E. and F.L. According to the reporting party, Jasper pulled down his pants and showed his buttocks to father Jose E. and the children at a custody exchange between mother and father. Mother seemed to be under the influence of drugs, and it was reported she used "crystal meth" and marijuana. R.E. told the reporting party that mother and Jasper "are always yelling at each other" and Jasper makes mother cry.

The Department visited mother's home on May 25, 2017. Mother and the children resided with maternal grandmother. The Department social worker did not observe any drugs or paraphernalia in the home, or any safety hazards.

¹ All further statutory references are to the Welfare and Institutions Code.

Mother told the Department that Jasper was only a friend, and denied that he did anything inappropriate during the custody exchange. She also denied that she and Jasper yell in front of the children.

Mother agreed to submit to a drug test that day. She admitted she “used [m]eth for many years” but claimed she had not used it since October 2016, when she started a drug program.

Mother and father have an open family law case, and their dispute over custody has been contentious, with father making allegations that mother abuses substances, and mother alleging domestic violence between her and father. At the time of the referral, mother had primary custody of the children. However, after learning of the referral, father sought ex parte relief in the family court, and was granted “week on and week off visitation[.]”

Father reported that he and mother had been together for four years before they split up. During their relationship, father was gang affiliated, and he and mother used methamphetamine together. He believed mother was still using drugs and “slamming” crystal meth, and that maternal grandmother would watch the children while mother went out and partied. Mother had represented to the family court that she was in drug treatment, but father believed mother had forged paperwork for the family court. Father no longer used methamphetamine, but he used marijuana nightly “to relax, sleep, and eat,” with a doctor’s recommendation. Paternal grandmother cares for the children when he is under the influence. Father submitted to a drug test, and tested negative for all substances other than marijuana.

Father had obtained a video of the custody exchange from a Chevron gas station, which clearly showed a man pulling down

his pants and bending over as father drove away with the children.

Mother failed to drug test as promised on May 25, 2017. A June 5, 2017 test was positive for amphetamines and methamphetamine.

After the positive drug test, mother stopped returning the Department's calls. On June 8, 2017, the Department visited maternal grandmother's home. Mother was not there, and the children were being cared for by maternal grandmother. Maternal grandmother had not seen mother since May 28, 2017. Father picked up the children for a visit that day and returned them to grandmother on June 4, 2017. She did not know where mother was, and mother had not told maternal grandmother she was leaving the children in her care. Maternal grandmother spoke to mother on June 4, and told mother "not to come around if she was 'not doing good' " but had not been able to reach her since.

On June 9, 2017, the children were removed from mother's custody and placed with father.

Mother has a history of child welfare referrals. In 2013, mother lost custody of an older child in a family law proceeding, because of domestic violence and drug use.

In September 2016, the Department substantiated a referral for general neglect of R.E. and F.L., based on mother's admission that she had been using methamphetamine for several years. At the time, the family court gave father custody of the children, and ordered mother's visitation to be monitored.

In November 2016, the Department received another referral for general neglect by mother, but the referral was "[e]valuated [o]ut."

In January 2017, the Department received a referral that mother was under the influence of drugs. The Department found mother to be in compliance with her drug program through the family court. The referral was therefore closed as unfounded.

Mother also has a criminal history, spanning 2003 until 2015, with arrests for driving under the influence of alcohol, driving without a license, petty theft, and being under the influence of a controlled substance.

According to the September 2017 jurisdiction/disposition report, mother admitted she had used methamphetamine over a period of 12 years, starting when she was 17. She denied being a heavy user, and claimed she used every other week. She had “detoxed” while in an inpatient program from October 2016 until February 2017, and enrolled in an outpatient program in February 2017.

Mother had relapsed about a week before her initial contact with the Department in this case. She left the children with her mother in June because maternal grandmother told her to not come around if she was using drugs. She did not return maternal grandmother’s calls because “she had given up.” Mother had been sober since July 26, 2017, and had enrolled in a residential treatment program.

The Department’s supplemental reports confirmed that mother had enrolled in inpatient treatment on July 30, 2017, and was participating in drug counseling, and domestic violence and parenting classes. Mother had also started working fulltime. Nevertheless, mother tested positive for marijuana on August 7, 2017. Between August 17, 2017 and October 25, 2017, mother missed three drug tests. However, she had five negative tests during this period. Mother’s drug program reported that mother

“has show[n] improvement by taking responsibility for her own actions”

The adjudication hearing was held on November 2, 2017. The court sustained allegations based on mother being a “recent abuser of amphetamine and methamphetamine” The court struck all allegations relating to father.² The court ordered monitored visitation for mother, and the children were to remain with their father.

The Department’s January 2018 disposition report noted that mother had tested negative for drugs 11 times between October 30, 2017 and January 10, 2018. She was regularly visiting with the children, and the visits were going well. Mother had completed substance abuse, domestic violence, parenting, and anger management programs. The Department recommended that mother’s visitation be liberalized to unmonitored day visits.

The disposition hearing was held on January 19, 2018. The court found that “mother is well on her way to doing all she needs to do for the sake of the kids [but] there’s still some way to go.” The court removed the children from mother, and ordered unmonitored visitation. Mother timely appealed.

DISCUSSION

1. Jurisdiction

Mother contends the findings under section 300, subdivision (b) are unsupported, arguing there was no evidence

² The first amended petition alleged domestic violence between mother and father, and that father knew of mother’s substance abuse but failed to protect the children.

she was a “substance abuser” or that her drug use placed the children at risk of harm.

Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child if the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or . . . by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (*Ibid.*) “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (§ 300.2.)

Substantial evidence supports the court’s exercise of jurisdiction here. (See *In re Cole C.* (2009) 174 Cal.App.4th 900, 916.) There was substantial evidence mother abused methamphetamine, and that the children were at risk of harm in her care. Mother admitted to regularly using methamphetamine over a period of 12 years, had a criminal history consistent with such drug abuse, lost custody of an older child due to her substance abuse, had several child welfare referrals based on her drug abuse, and she had two positive drug tests and several missed tests during the pendency of this case. Moreover, while she was using, mother abandoned the children in the care of maternal grandmother, without making arrangements for their care. The juvenile court “need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) Given the children’s young age,

mother's drug abuse created a substantial risk to their safety.
(*In re Drake M.* (2015) 211 Cal.App.4th 754, 767.)

2. Disposition

Mother contends the Department did not meet its burden of proof for removal of the children, arguing there was no risk of harm to the children, or there were reasonable means to protect the children without removing them from her care. We are not persuaded.

A child may not be removed from a parent or guardian unless there is clear and convincing evidence of “substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).) A juvenile court’s removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

Given mother’s extensive drug history, her relatively new-found sobriety, and her recent relapse, we find substantial evidence supports the juvenile court’s conclusion that removal was necessary, and that there were no other reasonable means of protecting the children.

DISPOSITION

The orders are affirmed.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

ADAMS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.